Beverly Health and Rehabilitation Services, Inc., Its Operating Regional Offices, Wholly-Owned Subsidiaries and Individual Facilities and Each of Them and/or Its Wholly-Owned Subsidiary Beverly Enterprises-Missouri, Inc., d/b/a New Madrid Nursing Center *and* Manufacturing, Production and Service Workers Union, Local 24, AFL–CIO. Cases 14–CA–24168–1 and 14–CA–24168–3

June 12, 1998

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND LIEBMAN

On April 9, 1997, Administrative Law Judge George Carson II issued the attached decision. The Respondent filed exceptions, a supporting brief, and an answering brief. The General Counsel filed limited exceptions, a supporting brief, and an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Beverly Health and Rehabilitation Services, Inc., Its Operating Regional Offices, Wholly-Owned Subsidiaries and Individual Facilities and Each of Them and/or Its Wholly-Owned Subsidiary Beverly Enterprises-Missouri, Inc., d/b/a New Madrid Nursing Center, New Madrid, Missouri, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Lucinda L. Flynn, Esq., for the General Counsel.
Keith R. Jewell, Esq., for the Respondent.
Jeff Keating, for the Charging Party.

DECISION

STATEMENT OF THE CASE

GEORGE CARSON II, Administrative Law Judge. This case was tried in St. Louis, Missouri, on December 9 and 10, 1996. The charge in Case 14–CA–24168–1 was filed on July 17, 1996, and amended on October 3, 1996.[1] The charge in Case 14–CA–24168–3 was filed on July 29 and amended on October 3. The consolidated complaint was issued on October 8 and amended on November 15. The complaint, as amended, alleges that Respondent Beverly, a single employer, at the New Madrid Nursing Center, violated Section 8(a)(1) of the National Labor Relations Act by informing its employees that they were no longer represented by the Union, and Section 8(a)(5) of the Act by withdrawing proposals from the bargaining table, by withdrawing recognition from the Union, and by removing the union bulletin board. Respondent's timely answer denies all violations of the Act and affirmatively pleads that the Union did not represent a majority of the employees in the appropriate unit and that Respondent had a good-faith doubt of the Union's majority status.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, is a health care institution engaged in the operation of nursing homes at various locations including its facility in New Madrid, Missouri, where it annually derives gross revenue in excess of $100,000 and purchases and receives goods valued in excess of $5000 directly from points located outside the State of Missouri.[2] I find and conclude that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The answer admits and I find and conclude that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. SINGLE EMPLOYER

The complaint alleges, and the answer denies, that Beverly Health and Rehabilitation Services, Inc., its operating regional offices, wholly owned subsidiaries, and individual facilities are a single employer. The General Counsel requested that I take judicial notice of the Board decision in *Beverly I*,[3] and the administrative law judge decisions in *Beverly II and III*. Respondent objected and I overruled that objection, stating that I would take notice of decided Board precedent.[4]

[1] All dates are in 1996 unless otherwise indicated.

[2] Respondent's answer denied the single-employer allegations, and it does not admit the gross revenue derived at the New Madrid facility. To avoid any confusion, the parties stipulated to the foregoing jurisdictional facts which establish that Respondent, at its New Madrid facility, is engaged in commerce as defined in the Act. *University Nursing Home*, 168 NLRB 263 (1967).

[3] *Beverly Enterprises*, 310 NLRB 222 (1993), enfd. as modified sub nom. *Torrington Extend-A-Care Employee Assn. v. NLRB*, 17 F.3d 580 (2d Cir. 1994). The Court of Appeals denied the corporatewide remedy ordered by the Board. Respondent admitted that it was a single employer in that case.

[4] The single-employer issue was fully litigated in *Beverly II*, and the administrative law judge in *Beverly III* took notice of the record in that case and received additional evidence. Those cases, in which both judges found *Beverly* to be a single employer, are pending before the Board and are not yet Board precedent.

Respondent admitted that it was a single employer in *Beverly I.* I find it unnecessary to address the single-employer issue in view of Respondent's stipulation to the facts on which I have based my finding that Respondent is an employer engaged in commerce and my determination that the remedy is appropriately limited to the facility involved in this proceeding, the New Madrid Nursing Center.

III. ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

The Union was certified as the exclusive collective-bargaining representative of Respondent's nonprofessional employees at its New Madrid, Missouri facility on July 10, 1995. The Respondent contacted the Union and initial bargaining sessions were set for September 20 and 21, 1995. Thereafter the parties met and bargained on November 20, 1995, January 25, and June 5. All bargaining sessions, except the June 5 session, were held at a motel in Cape Girardeau, Missouri, a town near New Madrid. With the agreement of the parties, various agreed changes were made in employee wages and working conditions. In negotiations, the chief spokesmen for Respondent were Regional Director of Associate Relations Robert Findeiss and Associate Relations Representative Joe Maniaci.[5] The Union was represented at the New Madrid facility by Business Representative Mark Jackson. The chief negotiators were Business Agents Jeff Keating and Mark Spano.

At the initial bargaining session on September 20, 1995, the Company was represented by Findeiss and Maniaci and the Union by Keating, Jackson, and two employee union members. The Union presented the Company with a list of 14 demands, including major economic items such as wages, health and life insurance, and a 401(k) plan. The Union also presented model language for a total contract. The Company presented three proposals dealing with holidays, sick pay, and vacations. Agreement was reached on sick pay, which was among the items on the Union's list of 14 demands.

On September 21, 1995, the same representatives were present. The parties entered into a letter of understanding regarding an overtime policy that, inter alia, provided for progressive discipline for employees who failed or refused to work assigned overtime. It was agreed that the next bargaining session would be in late October, but Findeiss was physically unable to attend that meeting and it was rescheduled for November.[6]

On November 20, 1995, the same representatives were present. The Company presented its model language for a total contract. The overtime policy previously agreed on had been typed. This typed document, designated as a letter of understanding, was signed and dated November 20, 1995. The parties also signed a letter of understanding regarding an addendum to the attendance policy. The parties verbally agreed on reporting pay and uniforms, two of the Union's initial 14 demands.[7]

On January 25, Keating was absent. He was replaced by Mark Spano. The parties met and agreed on a wage increase, insurance, and a 401(k) plan. The verbal agreement of November 20 for 2 hours' reporting pay was formalized using the language from the Union's model contract, and the verbal agreement in which the Company was to provide two uniforms was written onto a document titled memorandum of agreement. The letter of understanding regarding overtime was included in the memorandum of agreement.[8] All the Union's initial 14 demands had been addressed and either agreed upon, agreed upon as modified, or withdrawn.[9] Findeiss stated that he would put the draft of a contract together and forward it to Keating for his review.[10]

In early April, Keating received the Company's draft contract. He reviewed it, noted some inaccuracies and omissions, redrafted the contract, and sent it back to the Company at the end of April. Findeiss responded with a letter dated May 3, stating the Company's willingness to meet to discuss unresolved issues relating to the collective-bargaining agreement. A meeting was arranged for June 5 in Chicago since Maniaci, Keating, and Spano were all in the Chicago area.

On June 5, Findeiss and Maniaci met with Keating and Spano at a Chicago motel near Midway Airport. Maniaci had highlighted various items in the draft contract that Keating had sent to the Company. In a meeting lasting about an hour, the parties went through the draft and addressed the areas highlighted by Maniaci. It is undisputed that the parties were working from this document. The first highlighted item, additional language in the recognition paragraph, was explained by the Union. No disagreement was expressed after the explanation, and there was no request to change the language. In the course of the meeting, the Union agreed to strike language that would have made part-time employees eligible for holiday pay. The parties agreed to allow 4 days off for steward training and education. Keating acknowledged that he had inadvertently omitted a previously agreed-upon paragraph in the vacancies provision in the draft and agreed that it be reinserted. The Company had highlighted the provision in the grievance procedure that permitted 5 days in which a grievance had to be submitted. After discussion, there was no

[5] Findeiss is now director of labor relations and Maniaci is now group manager of human resources, area 18.

[6] Findeiss acknowledged canceling a meeting due to physical problems, but he did not recall when. I find it was the October meeting as there is no other meeting that Respondent acknowledges canceling.

[7] There was no meeting on November 21, 1995. It is immaterial whether the meeting was canceled by mutual consent, as Respondent contends, or because Findeiss was ill.

[8] Findeiss disputed Spano's testimony that the various ancillary documents, to which the memorandum refers by saying ''see attached,'' were physically attached to the memorandum at the time he signed it. This dispute is immaterial because, whether attached or not, there is no claim or evidence that the documents identified by Spano were other than the documents to which the memorandum referred. Maniaci did not deny that they were attached.

[9] The final item on the list of 14 demands dealt with paying employee members of the negotiating committee for lost time. This never occurred. The Union, as reflected by the memorandum, accepted the Company's existing benefit plans. A wage increase of 59 cents per hour in the nursing department and 10 cents per hour in the ambulatory department was agreed on and implemented.

[10] Spano states that, with this memorandum, all the Union's demands had been addressed. No further negotiations were scheduled because, as far as Spano was concerned, ''We had a contract.''

change in this provision.[11] It was also agreed that the no strike or lockout clause would be waived as to wages and health insurance at the times the contract provided that these items could be reopened.

When the meeting concluded, all parties understood that they had not reached agreement regarding the permitted length of employment before an employee incurred the obligation to pay proportionate union dues under the union-security article, the length of the probationary period for new employees, and the length of employment before full-time employees became eligible for holiday pay. In all three instances, the Union sought 30 days and the Company sought 90 days. The difference between 30 and 90 days was first discussed in connection with the union-security article. The Union offered to split the difference and specify 60 days. Findeiss stated, ''Sounds like a winner, put it in writing and we'll see what it looks like.'' The Union proposed the same splitting the difference regarding the probationary period and eligibility for holiday pay.[12] The parties also were aware that they disagreed concerning successorship. The Union sought a provision in which the Company would have any successor ''retain'' current employees. The Company would require only that any successor be ''requested to retain'' current employees. Thus, there were four items about which the parties acknowledged disagreement.

Additionally, there were three items that the record establishes were unresolved. Regarding checkoff, the Company wanted to assure the voluntary deduction of union dues. No change in the proposed contractual language was requested, rather, the Company wanted additional language proposed. The Union interposed no objection to voluntary deduction.[13] Regarding vacations, the Company had added language providing for forfeiture of any accrued vacation to terminated employees. It sought to justify this change by arguing that Missouri law required this. The Union stated that it would agree to this language if, in fact, that was what the law provided. The Company agreed to drop the language if the law did not so provide.[14] Regarding overtime, the Company sought to have any employee who failed or refused to work overtime to be considered a voluntary quit, contending that this was the policy being followed. The Union proposed progressive discipline as provided the letter of understanding entered into by the parties on November 20, 1995, and incorporated in the memorandum of agreement signed on January 25.[15]

At the close of this meeting it was agreed that Keating, by June 10, would forward to Findeiss, by facsimile transmission, the changes to which the Union agreed. It was further agreed that Spano would fly to the New Madrid facility on June 12 and meet with Findeiss to finalize the collective-bargaining agreement.[16]

Keating forwarded the changes to which the Union agreed. The Union agreed to a 60-day probationary period and employment for 60 days before becoming eligible for holiday pay. It did not alter its position requiring a dues obligation after 30 days. Nor did it agree that any successor only be requested to retain current employees. There was no contractual proposal regarding voluntary dues deduction. Consistent with its understanding that the Company would drop its demand for forfeiture of accrued vacation unless this was required by Missouri law, the Union did not agree to the forfeiture language. Consistent with its position on June 5, the Union retained progressive discipline in the overtime policy.

Spano went to the New Madrid facility on June 12. Findeiss was not there. A call was placed to Findeiss who

[11] Maniaci did not take contemporaneous notes of the meeting. He testified that he prepared a summary the following day. That summary states that the grievance procedure language on the document from which the parties were negotiating was different from the company proposal. There was no discussion or disagreement regarding the overall language of the grievance procedure. The Company requested, and the Union agreed, to substitute the word supervisor for the word foreman. The only substantive discussion related to the number of days allowed for presentation of a grievance, and the parties initialed the provision as drafted, permitting 5 days. Maniaci acknowledged that, in a pretrial affidavit, he had sworn that the parties had agreed on the grievance procedure.

[12] Although Findeiss indicated that splitting the difference would appear to be acceptable, he did not actually agree to accept 60 days. The Union, although proposing to split the difference, did not do so as to union security. As discussed infra, the Union offered 60 days with regard to the probationary period and holiday pay, but maintained its position of 30 days regarding the union-dues obligation.

[13] An employee must, of course, voluntarily agree to dues checkoff. Thus, it appears this issue related to any limitation on an employee's right to discontinue dues checkoff. This would account for Keating's testimony that he told the Company that he needed to review the Union's checkoff agreement. It does not appear that he understood that the Company wanted specific contractual language. Although there may have been a misunderstanding regarding whether there needed to be contractual language, the Union did not disagree with the concept of voluntary dues deduction, the Company did not object to any of the Union's proposed contractual language on June 5, and the Company did not propose any additional language.

[14] Maniaci testified that the Union argued that Missouri law required that accrued vacation be paid on termination. His notes, which he prepared the day following negotiations, state that the Union had omitted the forfeiture language. Reliance by the Union on Missouri law is not mentioned. The document from which the parties were working reflects that the Company added this language. I credit Keating that he questioned the reason for this addition and received the ''Missouri law'' response.

[15] Keating acknowledged that Maniaci asserted that the Company ''had discussed this [overtime] with Mark Jackson.'' Dianne Ivy, administrator of the facility, and Kim Ivie, director of nursing, met with Mack Jackson, but not Keating or Spano, on February 21 regarding altering the rotation system by which overtime was assigned. Ivy testified that, after discussing and agreeing on a new system for assignment of overtime, it was also agreed that an employee failing or refusing to work overtime would be considered a voluntary quit. Ivie recalled the discussion regarding rotation and indicated the change was for a trial period. Although she did not specifically recall anything being said about discipline, her testimony suggests that at least one employee was discharged for failing to work overtime. There is no written agreement reflecting the parties' mutual understandings regarding this meeting. The General Counsel did not recall Jackson to rebut Ivy's testimony, and the complaint does not allege a unilateral change regarding abandonment of the letter of understanding. It certainly appears that the policy may have been altered, although Keating was not aware of the alteration.

[16] Keating and Spano both credibly testified that a meeting for June 12 was set. Although both Findeiss and Maniaci denied that a meeting was set, Maniaci acknowledged that Spano said that he would be at New Madrid the following week. Most significantly, Findeiss did not deny having a telephone conversation with Spano on June 25 in which he apologized for missing the meeting.

advised, presumably through a secretary, that he was tied up.[17]

On the morning of June 25,[18] at the New Madrid facility, an employee presented Administrator Dianne Ivy with a copy of a petition bearing the signatures of 22 employees, followed by the date. The earliest date was June 21, the latest was June 25. The petition stated that the employees no longer wished to be represented by the Union. Ivy immediately called Maniaci because she did not know whether to accept the petition. Thereafter, still on June 25, Ivy prepared a list of all unit employees. The copy of the petition and list of employees was sent to Respondent's attorney on June 26.

Thereafter, also on June 25, Findeiss called Spano.[19] Findeiss stated that he was sorry he couldn't make the meeting on June 12; he was tied up. He stated, since the Fourth of July holiday was coming up, ''that he would call me right after the holiday, we'd get together and sign this contract and be done with it.''[20]

On July 1, Maniaci wrote Spano the following letter:

> To date, New Madrid's complete contract offers put on the table have not been accepted by the Union. Obviously, new proposals will be required. Be advised, that all Articles or provisions previously proposed by the Employer, but not agreed to by the Union, are hereby withdrawn and are no longer on the table inviting acceptance. New proposals are being considered.

Findeiss had directed Maniaci to send the letter.[21] No other effort was made to contact the Union. Respondent did not know what specific proposals it was withdrawing.[22] No new proposals were being considered.[23]

On July 8, Spano returned to his office and, for the first time, saw the letter of July 1. He immediately called Findeiss who was not in. He left a message stating, ''You were supposed to call me after the Fourth. Very Important.'' Findeiss did not respond. Spano called again on July 10. Again there was no response.

On July 11, Director of Nursing Kim Ivie, in Administrator Ivy's absence, was given another copy of the petition. It contained four more names than the original petition, 25 of whom were current employees. The unit consisted of 45 employees. Ivie, with assistance from counsel, wrote Mark Jackson a letter which states that the Company had received a petition from a majority of the unit employees that stated they no longer wished to be represented by the Union; ''Therefore, recognition of the Union as the collective bargaining representative of our employees is hereby withdrawn.''[24]

On July 17, Maniaci went to the New Madrid facility. He removed union items from the bulletin board to which the Union had been granted access under the terms of the memorandum of agreement in January. He told employees that Respondent had withdrawn recognition and that they were no longer represented by the Union.

B. *Analysis and Concluding Findings*

The complaint alleges that Respondent violated Section 8(a)(5) of the Act by withdrawing proposals in an effort to impede the parties from reaching a collective-bargaining agreement. Respondent, in its brief, argues that the withdrawal did not occur in the face of actual or imminent acceptance and, even if it did withdraw the proposals because of knowledge of the decertification efforts, it was privileged to do so because of a shift in economic strength.

I find that the withdrawal of the proposals was, as alleged in the complaint, an effort by Respondent to impede reaching an agreement. Contrary to the testimony of Findeiss, suggesting ''months and months'' of bargaining but ''getting no where,'' the parties had achieved significant agreement, including the economic package, in only five bargaining sessions, September 20 and 21 and November 20, 1995, January 25, and June 5. Contrary to Findeiss, Keating and Spano had not been changing ''small bits of language.'' The disagree-

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[17] Ivy confirms that Spano was present but denied that anything was said concerning a meeting with Findeiss or Maniaci. Spano never testified that he spoke directly with Ivy. Rather, when Findeiss did not show up, he went to Ivy's office and ''they called his [Findeiss's] office.''

[18] Ivy testified that she only worked half a day, the morning of June 25.

[19] Findeiss was quite evasive when counsel for the General Counsel sought to determine the date that he learned that Ivy had been handed a petition. He ultimately admitted that he heard rumors of a petition being passed around in June. In view of his testimony that his source of information was Maniaci, and in view of counsel for Respondent's avoidance of this area when he examined Findeiss, I find that Maniaci reported Ivy's telephone call to Findeiss shortly after he received it. Findeiss was Maniaci's immediate superior at that time.

[20] There is no evidence of any contact between Findeiss and Spano after this telephone call. An agreement relating to settlement of several grievances was sent by facsimile on June 27 from Spano to Findeiss, but there is no evidence of actual contact.

[21] Findeiss acknowledged that nothing had been said to the Union regarding withdrawal of proposals. At the hearing Findeiss testified that the proposals were withdrawn because

> [W]e had been going over [them] for months and months and months and we were getting no where. . . . Mr. Keating and Mr. Spano, each time we got together, might change substantive, small bits of language, but in no way, shape or form were [we] coming to agreement on those proposals. It was my feeling that if we took those off the table we could start, start anew, if you will. Rearrange and come up with some proposals that we would have some amicable language between the Union and the Company.

[22] Maniaci acknowledged that he did not know what specific proposals were being withdrawn. Findeiss had no independent recollection of which proposals were or were not open. Various assertions he made, such as the hours of work article being open, were demonstrated to be in error. The record clearly establishes, and I find, that neither Maniaci nor Findeiss were aware of what specific proposals were being withdrawn.

[23] Maniaci acknowledged that, to his knowledge, no new proposals were being considered. Findeiss, after seeking to avoid directly answering counsel for the General Counsel, acknowledged that he never drafted any further proposals. Respondent did not present any evidence that it was considering any new proposals.

[24] Ivy, at first, stated that she and Director of Nursing Ivie jointly made the decision to withdraw recognition from the Union. When examined regarding her initial receipt of the petition on June 25 and questioned why she had not withdrawn recognition at that time, she acknowledged that ''to be quite honest, I was waiting on advice from my attorney.''

ments, at the close of the June 5 meeting, had nothing to do with the wording of the proposals. The disagreements, as discussed above, were the substantive issues of whether employment should be 30, 60, or 90 days regarding union security, probationary period, and eligibility for holiday pay; whether a successor would ''retain'' or be ''requested to retain'' all current employees; whether Missouri law provided for forfeiture of vacation upon termination, and what discipline was to be imposed on employees who refused overtime. Respondent wanted to assure voluntary dues deduction, and the Union did not disagree, although no language was proposed. Contrary to Findeiss, there was no need to ''come up with some amicable language''; there was only a need to resolve the foregoing substantive issues.

Counsel for the General Counsel questioned Findeiss regarding the limited issues that were open. Respondent's unlawful motivation is demonstrated by the following exchange in which Findeiss would not even let counsel finish her question:

> COUNSEL: So you're saying then that you were going to withdraw the entire article.
>
> . . . .
>
> FINDEISS: Absolutely.
>
> COUNSEL: On seniority because you did not agree to the length of the probationary period in section 4?
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> FINDEISS: Absolutely.

On June 5, the Union agreed to various minor changes in wording requested by Respondent, such as substitution of the word supervisor for foreman. Respondent did not inform the Union of a need for any additional changes in wording, and certainly did not suggest the need for such extensive changes that entire articles would have to be withdrawn. Findeiss, after receiving the fax on June 10, did not contact the Union regarding any need for different language. On the morning of June 25, Ivy informed Maniaci of the petition. Thereafter, on June 25, Findeiss called Spano. He apologized for missing the meeting on June 12 and put off bargaining until after July 4. Nothing was mentioned about a need to withdraw any proposals. I find that this telephone call was intended to buy as much time as possible in order for Respondent to determine its strategy. Respondent decided on a strategy that would preclude any possibility of a contract. On July 1, Respondent withdrew ''all Articles or provisions previously proposed by the Employer, but not agreed to by the Union.'' Neither Findeiss nor Maniaci knew what was being withdrawn. No new proposals were made, thus a contract was an impossibility. Respondent's precipitous withdrawal of proposals 10 days before the end of the certification year was intended to assure that there would be no collective-bargaining agreement.

The record establishes, and I find, that the parties were on the threshold of concluding a collective-bargaining agreement. The Union, on the basis of Findeiss' statement that it ''sounds like a winner,'' agreed to split the difference between 30 and 90 days and proposed 60 days regarding the probationary period and eligibility for holiday pay. The Union's continued proposal of 30 days with regard to union security and continued proposal, in the successorship provision, of the word ''retain,'' instead of ''requested to retain,'' would not have proved to be a stumbling block to reaching an agreement.[25] The Union never expressed any opposition to voluntary dues deduction. Although it is unclear whether appropriate language in the checkoff agreement would have satisfied Respondent's concern, there is certainly no evidence that agreement on this issue was a problem. The Union was told that Respondent's position on forfeiture of vacation was based on Missouri law, and Respondent had agreed that, if the law did not so provide, the language Respondent had added to that provision would be dropped. Keating had checked and discovered there was no such law, thus this was not an issue.[26] The Union, consistent with the letter of understanding and memorandum of agreement, continued to propose progressive discipline for employees who failed or refused to work overtime. Respondent proposed that those employees be considered to have voluntary quit, pursuant to an alleged agreement made with Jackson and of which Keating was unaware. Thus, it appears that each party proposed what it understood to be the status quo. This issue would not have been a problem or precluded agreement once the actual status quo was established. *Transit Service Corp*., 312 NLRB 477, 483 fn. 7 (1993).

In finding that the parties were on the threshold of concluding an agreement, I note that both the Respondent and the Union were satisfied that the collective-bargaining agreement could be concluded quickly. Keating had faxed to Findeiss the changes to which the Union agreed on June 10. Spano intended to conclude the agreement on June 12. When Findeiss sought to buy time, by delaying bargaining until after July 4, he stated to Spano, ''[W]e'd get together and sign this contract and be done with it.'' Thus, contrary to Respondent's argument, I find that that the withdrawal of the proposals came in the face of imminent acceptance by the Union.

Respondent's argument that it was privileged, after learning of the employee decertification efforts, to withdraw its proposals due to a shift in economic strength finds no support in the Act or Board precedent. The Act requires that the parties meet and ''confer in good faith.'' In *Challenge-Cook Bros*., 288 NLRB 387 (1988), cited by Respondent, the respondent there eliminated the retroactive application of its wage and pension proposals in the face of a strike. There was no wholesale withdrawal of proposals. The Board concluded, in the circumstances of that case, that the respondent took ''a reasonable bargaining stance under all the circumstances.'' Id. at 389.[27] In the instant case, Respondent took no stance. It was not insisting on particular proposals. Rather, it withdrew all proposals in order to preclude con-

[25] Keating stated that he had instructed Spano not to let the ''request retention'' language get in the way of an agreement.

[26] As discussed above, I have credited Keating in this regard. If Respondent were to retreat from its previous agreement and propose some other basis for insistence on the forfeiture language, this issue would be on the table; however, on the basis of my findings regarding the contemporaneous understanding of the parties on June 5, this was not an issue.

[27] Similarly, in *Atlas Metal Parts Co. v. NLRB*, 660 F.2d 304 (7th Cir. 1981), the Court of Appeals found, contrary to the Board, that the respondent was privileged to insist ''on [its] original proposals.'' *Auciello Iron Works*, 317 NLRB 364 (1995), also cited by Respondent, is inapposite. In that case the respondent refused to bargain due to an alleged good-faith doubt of the union's continuing majority status. Respondent, on July 1, was not privileged to assert doubt as to the Union's majority status.

summation of an agreement. As discussed above, Respondent did not even know what proposals it was withdrawing. Contrary to the representation made in Maniaci's letter, there were no ''new proposals'' under consideration. No new proposals were ever offered. Respondent was not lawfully maintaining a reasonable bargaining stance; it was precluding bargaining to avoid agreement.

Despite the June 25 presentation of the petition, signed by a majority of Respondent's employees who stated that they no longer wished to be represented by the Union,[28] Respondent was not privileged to entertain a good-faith doubt regarding the Union's majority status until the conclusion of the certification year. *Brooks v. NLRB*, 348 U.S. 96 (1954). In this case, as in *Den-Tal-EZ, Inc*., 303 NLRB 968 (1991), Respondent ''seized on the . . . legally meaningless employee petition as a mechanism for escape from its statutory duty to bargain.'' Id. at 970. Although there were only 10 days left in the certification year when Respondent wrote its letter, Respondent had postponed bargaining on June 25, when Findeiss called Keating. Those 15 days provided ample time in which the parties could have reached agreement on a contract.[29] Obviously Respondent was concerned that a contract and the corresponding obligation not to question the Union's majority status during the term of the contract would result from any meeting. Thus, on June 25, Respondent forestalled any meeting until after July 4. On July 1, Respondent assured that there would be no contract by withdrawing all proposals upon which there had not been agreement. No new proposals were substituted. A respondent violates the Act when it withdraws proposals in order to preclude consummation of a collective-bargaining agreement prior to the end of the certification year. *Glomac Plastics, Inc*., 234 NLRB 1309, 1319 (1978); *Industrial Chrome Co*., 306 NLRB 79, 84 (1992). I find that this Respondent did so, and in so doing violated Section 8(a)(5) of the Act.

The complaint alleges that Respondent's withdrawal of recognition on July 11 violated Section 8(a)(5) of the Act. Respondent, citing *Lee Lumber & Bldg. Material Corp*., 322 NLRB 175 (1996), in which the Board notes that not every unfair labor practice will taint evidence of a subsequent loss of majority status, argues that even if the withdrawal of proposals on July 1 be found to violate the Act there is no causal relationship between the withdrawal of proposals on July 1 and withdrawal of recognition on July 11. That case has no impact on my decision here. My decision is predicated upon the Respondent's unlawful actions after it learned of the petition. Regarding the withdrawal of recognition, I find that Respondent's withdrawal of recognition, after unlawfully precluding bargaining in the certification year, constituted ''a prima facia violation of the Act.'' *Whisper Soft Mills*, 267 NLRB 813, 816 (1983), revd. on other grounds 754 F.2d 1381 (9th Cir. 1984).[30] The Union was entitled to 1 year of good-faith bargaining from the date of certification. Respondent's actions precluded not only a full year of bargaining, its withdrawal of proposals precluded the possibility of an agreement. In such cases, the proper remedy is extension of the certification year.[31] At the least, the Union was deprived of 10 days' bargaining by Respondent's unlawful conduct on July 1. Thus, at an absolute minimum, an extension of the certification year by at least 10 days, to July 20, would be warranted. Consequently, Respondent's withdrawal of recognition on July 11, during the extended certification year, constituted ''a prima facia violation of the Act.'' Id.[32]

The complaint alleges that Respondent's unilateral removal of the union bulletin board violated Section 8(a)(5) of the Act. Respondent contends that its action did not violate the Act because the Union no longer represented the employees. As I have found, the withdrawal of recognition was unlawful. The Union did represent the employees. I find that Respondent's unilateral removal of union postings from the bulletin board designated for the Union's use constituted a change in working conditions and violated Section 8(a)(5) of the Act. *Arizona Portland Cement Co*., 302 NLRB 36 (1991).

The complaint alleges that Respondent violated Section 8(a)(1) of the Act when Maniaci informed employees that Respondent had withdrawn recognition from the Union and that they were no longer represented by the Union. Insofar as the withdrawal of recognition was unlawful, the Union continued as the employees' collective-bargaining representative. The erroneous representation restrained and coerced employees in that it falsely advised them that they could no longer rely on the Union to represent them. In making this statement, I find that Respondent violated Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. By informing its employees that it had withdrawn recognition and that the Union was no longer the exclusive collective-bargaining representative of its employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By withdrawing bargaining proposals in an effort to impede the parties from entering into a collective-bargaining agreement, withdrawing recognition from the Union, and unilaterally changing employee working conditions, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

[28] The petition, as of June 25, had 22 names. There were 41 unit employees on that date.

[29] In *Den-Tal-EZ*, the Board adopted the decision which discussed the possibility of acceptance of a contractual offer within 5 days. Id. at 970.

[30] In view of this finding, I need not address the General Counsel's request that the Board adopt a rule repudiating the ''good-faith doubt'' standard and requiring a decertification election in cases where a union's continuing majority is questioned.

[31] As in *Whisper Soft Mills*, the purpose is to restore the status quo. Respondent's unlawful acts occurred within the certification year, a period in which the Union did not have to defend its majority status. Respondent cannot, after unlawfully depriving the Union of the opportunity to enter into a contract in the certification year, withdraw recognition on the day the certification year ends. The status quo is entitlement to one full year of good-faith bargaining.

[32] The record establishes that the Union was actually deprived of almost 1 month of bargaining, first by Findeiss's failure to meet on June 12, then by his forestalling bargaining until after July 4 when he called Spano on June 25, and finally by the withdrawal of proposals on July 1. Only the action of July 1 is alleged as an unfair labor practice; however, I will consider all the surrounding circumstances regarding an appropriate remedy.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Respondent shall be ordered to reinstate the bargaining proposals that it unlawfully removed on July 1. In order to provide a reasonable time for the parties to resume negotiations and bargain for a contract, I shall order a 6-month extension of the certification year. *Industrial Chrome Co*., 306 NLRB 79 fn. 2 (1992). As in *Colfor, Inc*., 282 NLRB 1173 (1987), I find that it would be unreasonable to assume that the parties can resume bargaining at the same point they left off on June 5, 1996, some 10 months prior to the date of this decision. See *Den-Tal-EZ*, supra at 971. Respondent shall also be ordered to restore the union bulletin board and post an appropriate notice.[33]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[34]

ORDER

The Respondent, Beverly Health and Rehabilitation Services, Inc., its Operating Regional Offices, Wholly-Owned Subsidiaries, and Individual Facilities and Each of Them and/or Its Wholly-Owned Subsidiary Beverly Enterprises-Missouri, Inc., d/b/a New Madrid Nursing Center, New Madrid, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Informing employees that they are no longer represented by Manufacturing, Production and Service Workers Union, Local 24, AFL–CIO.

(b) Unilaterally changing employee working conditions.

(c) Withdrawing bargaining proposals in order to impede reaching a collective-bargaining agreement with the Union.

(d) Withdrawing recognition from the Union as the exclusive collective-bargaining representative of employees in the appropriate unit.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize the Union upon resumption of bargaining in good faith and for 6 months thereafter as if the initial year of Board certification has not expired.

(b) Reinstate the proposals that it unlawfully withdrew on July 1, 1996.

(c) On request, bargain in good faith with the Union as the exclusive collective-bargaining representative of all the employees in the following appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed written agreement:

> All full-time and regular part-time certified nursing assistants, nursing assistants, certified medicine technicians, restorative aides, cooks, medical records/central supply clerk, dietary, housekeeping and laundry employees; excluding office clerical, professional and confidential employees, guards, and supervisors as defined in the Act.

(d) Restore the union bulletin board at its New Madrid, Missouri facility.

(e) Within 14 days after service by the Region, post at its facility in New Madrid, Missouri, copies of the attached notice marked ''Appendix.''[35] Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 17, 1996.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible

[33] The General Counsel has requested several extraordinary remedies, including a corporatewide broad cease-and-desist order and posting. The predicate for this request includes Respondent's continued violations of the Act as found by the administrative law judges in *Beverly II and III*. The decisions in those two cases were issued on June 29, 1994, and June 12, 1995, respectively; however, the Board has not yet found the violations alleged. I also note that those cases, in which extraordinary remedies were recommended, were pending before the Board in September, when the Board issued its decision in *Beverly Enterprises*, 322 NLRB 334 (1996), and in January, when the Board issued its decision in *Beverly Manor-San Francisco*, 322 NLRB 968 (1997). Those cases, like this one, involved discrete violations at individual facilities. There was no discussion of extraordinary remedies and traditional remedies were ordered in both cases. Any order I might craft in this case would duplicate the recommended orders in *Beverly II and III* and would assure appeal of, rather than compliance with, my decision. In these circumstances, I deny the request for extraordinary remedies and urge swift compliance with the traditional remedies I have recommended.

[34] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[35] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT withdraw recognition from the Union and inform you that you are no longer represented by Manufacturing, Production and Service Workers Union, Local 24, AFL–CIO.

WE WILL NOT unlawfully withdraw bargaining proposals from the bargaining table.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL reinstate the bargaining proposals that we unlawfully withdrew.

WE WILL recognize the Union upon resumption of bargaining in good faith and for 6 months thereafter as if the initial year of Board certification has not expired.

WE WILL, on request, bargain in good faith with the Union as the exclusive collective-bargaining representative of all the employees in the following appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed written agreement:

> All full-time and regular part-time certified nursing assistants, nursing assistants, certified medicine technicians, restorative aides, cooks, medical records/central supply clerk, dietary, housekeeping and laundry employees; excluding office clerical, professional and confidential employees, guards, and supervisors as defined in the Act.

WE WILL restore the union bulletin board.

BEVERLY HEALTH AND REHABILITATION SERVICES, INC., ITS OPERATING REGIONAL OFFICES, WHOLLY-OWNED SUBSIDIARIES, AND INDIVIDUAL FACILITIES AND EACH OF THEM AND/OR ITS WHOLLY-OWNED SUBSIDIARY BEVERLY ENTERPRISES-MISSOURI, INC., D/B/A NEW MADRID NURSING CENTER